Ramanathan s/o Chelliah v Public Prosecutor

COURT OF APPEAL (KUALA LUMPUR) — CRIMINAL APPEAL NO W-09-30 OF 1994
SHAIK DAUD, NH CHAN JJCA AND ABDUL MALEK J
30 NOVEMBER 1995

Criminal Procedure *— Accused — Restraint of accused — Accused charged for outraging the modesty of two ladies — No application made by prosecution to have accused handcuffed — Whether proper to use handcuffs during trial or arraignment — Whether a matter of discretion for judge*

The accused in this case ('the appellant') was produced before the sessions court on two charges of allegedly outraging the modesty of two athletes under s 354 of the Penal Code (Cap 45). He was brought to court in handcuffs from the police station, and was put in the dock for the charges to be read to him. The appellant's counsel applied to the sessions court judge to have the handcuffs removed. The deputy public prosecutor opposed the application, whereupon the sessions court judge rejected the application of appellant's counsel. After the arraignment proceedings were over, the appellant was released on bail, and presumably, it was then that the handcuffs were removed. The appellant, not being satisfied with the order of the sessions court judge to have the appellant handcuffed ('the order'), filed a motion in the High Court requesting a revision of the order. The appellant's counsel argued that it was improper for the appellant to remain handcuffed in the dock on the grounds that: (i) an accused person is under the custody of the court and no longer that of the police, once he is put in the dock; and (ii) there were no grounds whatsoever upon which the court could exercise its discretion to order the handcuffs. The deputy public prosecutor, on the other hand, contended that even though an accused person is in the dock, he is still in the custody of the police, and as long as he is not on bail, he ought to be handcuffed for reasons of security. The High Court judge was of the view that the order was proper, and dismissed the appellant's motion. Hence, this appeal.

Held, allowing the appeal:

(1) It is in the sole discretion of the presiding officer to consider whether it is essential to have an accused person handcuffed, be it during the entire trial or at the arraignment, if and when an application is made by the prosecution. Such discretion must be exercised judiciously and not merely because the prosecution wants it to be. It is clear that firstly, there must be an application by the prosecution, and secondly, in order for the court to exercise its discretion judiciously, there must be some credible material before the court in support or otherwise of the application (see p 542C–D).

(2) In the present appeal, based on the record of proceedings, the deputy public prosecutor did not make any such application nor was there any credible material that was put before the court. The deputy public prosecutor conceded that the only ground put forward was that the appellant was not on bail then. Based on the alleged charges faced by the appellant, it could hardly be justified for him to be handcuffed. The sessions judge, therefore, did not exercise her discretion judiciously (see p 542E–F).

[Bahasa Malaysia summary

Tertuduh dalam kes ini ('perayu') telah dibawa untuk menghadap mahkamah sesyen atas dua pertuduhan mencabul kehormatan dua orang olahragawati di bawah s 354 Kanun Keseksaan (Bab 45). Dia dibawa ke mahkamah dengan kedua-dua tangannya digari dari stesen polis, dan telah diletakkan dalam kandang orang salah untuk pembacaan tuduhan kepadanya. Peguam perayu telah memohon kepada hakim mahkamah sesyen supaya gari ditanggalkan. Penolong pendakwa raya telah membantah permohonan itu, dan hakim mahkamah sesyen menolak permohonan peguam perayu. Selepas prosiding hadap-tuduh selesai, perayu telah dibebaskan dengan ikat jamin dan barangkali, pada masa itulah gari ditanggalkan. Perayu, yang tidak puas hati dengan perintah hakim mahkamah sesyen untuk menggari perayu ('perintah itu'), telah memfailkan satu usul di Mahkamah Tinggi meminta supaya perintah itu disemak. Peguam perayu berhujah bahawa adalah tidak betul untuk membiarkan perayu digari semasa dibicarakan atas alasan bahawa: (i) seseorang tertuduh adalah di bawah tahanan mahkamah dan tidak lagi di bawah tahanan polis sebaik sahaja dia diletakkan dalam kandang orang salah; dan (ii) mahkamah tidak mempunyai apa-apa alasan untuk melaksanakan budi bicaranya untuk membuat perintah tentang gari. Penolong pendakwa raya sebaliknya berhujah bahawa meskipun seseorang tertuduh sedang dibicarakan, dia masih dalam tahanan polis, dan selagi dia tidak diikat jamin, dia patut digari atas sebab keselamatan. Hakim Mahkamah Tinggi berpendapat bahawa perintah itu adalah betul dan menolak usul perayu. Perayu membuat rayuan.

Diputuskan, membenarkan rayuan itu:

(1) Adalah semata-mata bergantung kepada budi bicara ketua pegawai untuk mempertimbangkan sama ada adalah perlu untuk menggari seseorang tertuduh, semasa seluruh perbicaraan atau di hadap-tuduh, jika dan apabila satu permohonan dibuat oleh pihak pendakwaan. Budi bicara begitu mestilah dilaksanakan secara bijaksana dan bukan semata-mata kerana pihak pendakwaan inginkan ia dilaksanakan demikian. Adalah jelas bahawa pertama, harus terdapat satu permohonan oleh pihak pendakwaan, dan kedua, bagi membolehkan mahkamah melaksana budi bicaranya

secara bijaksana, material yang boleh dipercayai, sama ada yang menyokong permohonan itu atau tidak, harus dikemukakan kepada mahkamah (lihat ms 542C–D).

(2) Dalam rayuan ini, berdasarkan rekod prosiding, penolong pendakwa raya tidak pun membuat sebarang permohonan dan tidak juga terdapat apa-apa material yang boleh dipercayai yang dikemukakan di mahkamah. Penolong pendakwa raya bersetuju bahawa alasan tunggal yang beliau bergantung ialah bahawa perayu tidak diikat jamin pada masa itu. Berdasarkan pertuduhan yang dihadapi oleh perayu, adalah tidak munasabah untuk menggarinya. Dengan demikian, hakim sesyen tidak melaksanakan budi bicara beliau secara bijaksana (lihat ms 542E–F).]

Notes

For cases on whether handcuffs should be used in court, see 5 *Mallal's Digest* (4th Ed, 1994 Reissue) paras 34–35.

Cases referred to

PP v Wee Swee Siang [1948] MLJ 114
Yaakub bin Ahmad v PP [1975] 2 MLJ 223

Legislation referred to

Penal Code (Cap 45) ss 354, 392

Appeal from: Criminal Application No 44–55–1994 (High Court, Kuala Lumpur)

Karpal Singh (*Karpal Singh & Co*) for the appellant.
Stanley Augustin (Deputy Public Prosecutor) for the respondent.

Cur Adv Vult

Shaik Daud JCA (delivering the judgment of the court): This is an appeal from the decision of the learned High Court judge sitting at Kuala Lumpur, where the learned judge had refused to exercise his revisionary powers against the decision of the sessions court. The facts leading to this appeal are not in dispute.

The appellant Ramanathan s/o Chelliah was produced before the sessions court on 4 October 1995 at 11am on two charges of allegedly outraging the modesty of two of our athletes, an offence under s 354 of the Penal Code (Cap 45). He was brought to court in handcuffs from the Jalan Bandar police station. He was put in the dock of the court for the charges to be read to him. During this time, he was still handcuffed. His counsel Mr Karpal Singh objected to his client being handcuffed while he was in the dock and applied to the learned sessions court judge to have the handcuffs removed. The learned deputy public prosecutor Mr Stanley

A Augustin opposed the application, whereupon the learned sessions court judge rejected the application of learned defence counsel and the appellant remained handcuffed. After the arraignment proceedings were over, the appellant was released on bail and presumably it was then that the handcuffs were removed. The appellant, not being satisfied with the decision of the learned sessions judge, filed a motion in the High Court requesting a B revision of that order. The learned judge — after hearing arguments and considering the affidavits filed by both parties — dismissed the motion on the grounds that:

> The facts and the principles leave me no room to revise. The learned sessions court judge's order does not appear to be against the ... correctness, C legality or propriety.

From this ruling, it would appear that in the circumstances of this case, the learned judge was of the view that the order to have the appellant handcuffed was proper.

D Mr Karpal Singh argued here and in the court below that it was improper for the appellant to remain handcuffed in the dock, and the learned sessions judge ought to have ordered its removal. He argues that once an accused person is put in the dock, he is under the custody of the court and no longer that of the police. Furthermore, there were no grounds whatsoever upon which the court could exercise its discretion to order the E handcuffs. The learned deputy public prosecutor, on the other hand, is of the view that even though an accused person is in the dock, he is still in the custody of the police, and as long as he is not on bail, he ought to be handcuffed for reasons of security.

F Although we think that this appeal is now academic, after considering the records of appeal and hearing the arguments of both learned counsel, we are of the view that it would be useful for us to give our observations on this issue for guidance for future cases.

Mr Karpal Singh cited the Federal Court case of *Yaakub bin Ahmad v PP* [1975] 2 MLJ 223, a case of armed robbery under s 392 of the Penal G Code (Cap 45) where at p 224 Gill CJ (Malaya) (as he then was) made these observations:

> As an accused person is presumed innocent until he is proved guilty, *it is not the normal practice to put any restraint on him* when he appears before a court to be tried for a criminal offence. *Some sort of restraint, however, may become* H *necessary where the accused is violent or has committed a crime of violence or may have attempted to escape.* In the present case the learned deputy public prosecutor applied for permission of the court to have the accused handcuffed during the trial as he had made several attempts to escape. (Emphasis added.)

I In giving these observations, it is obvious that the learned Chief Justice had in mind the salutory observations of Callow J in *PP v Wee Swee Siang* [1948] MLJ 114, a case of gang robbery where at p 115 the learned judge observed:

> I should mention, before concluding, the complaint by Mr Salt that the accused was brought to the court below in manacles. An accused person is innocent until he is proved guilty, and *restraint is not usually required unless the accused is violent or has committed a crime of violence or that he may attempt to escape.* As to whether violence or escape was anticipated in this case I do not know. I hope those responsible for the custody of accused persons will bear these observations in mind, and refrain from the use of handcuffs on unconvicted persons unless essential. (Emphasis added.)

The Chief Justice's circular on the handcuffing of accused persons in court dated 24 February 1987 appears to be couched in a similar tone as the two cited cases.

In the final analysis, it is in the sole discretion of the presiding officer to consider whether it is essential to have an accused person handcuffed be it during the entire trial or at the arraignment, if and when an application is made by the prosecution. Needless to say, such discretion must be exercised judiciously and not merely because the prosecution wants it to be. It would seem clear to us from the Chief Justice's circular and the observations in both the above quoted cases that firstly, there must be an application by the prosecution, and secondly in order for the court to exercise its discretion judiciously, there must be some credible material before the court in support or otherwise of the application.

In the present appeal involving Mr Ramanathan s/o Chelliah and based on the record of proceedings before us, we could not find anywhere that an application was made by the learned deputy public prosecutor nor could we find any credible material put before the court. The learned deputy public prosecutor conceded that the only ground put forward was that the appellant was not on bail then. We are unanimously of the view that based on the alleged charges faced by the appellant, it can hardly be justified for him to be handcuffed. We are also of the view that the learned sessions judge did not, therefore, exercise her discretion judiciously.

It is, therefore, timely to remind lower courts to bear these observations in mind when exercising their discretion in such situations. We would therefore allow the appeal but as mentioned earlier the issue being now academic, we make no order on the appeal.

Appeal allowed.

Reported by Isabel Liong